



**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF**  
  
**Chachana Taylor,**  
                  **Complainant**  
  
**and**  
  
**AmeriEnvironmental, Inc.,**  
                  **Respondent**

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**CHARGE NO.: 2001 CE1961**  
**EEOC NO.: 210A 01013**  
**ALS NO.: 11722**

**RECOMMENDED ORDER AND DECISION**

This matter comes before me pursuant to an order of default entered against Respondent on November 19, 2002. A public hearing on damages only was held on February 28, 2003 at which Respondent did not appear. While Respondent was given an opportunity to participate in this matter, it did not do so and Complainant filed a post-hearing brief/petition for attorney's fees and costs on May 9, 2003. Complainant filed a Motion for Leave to File Amended Complaint on May 15, 2003, which was denied on June 24, 2003. This matter is now ready for decision.

**Statement of the Case**

Complainant was discharged from her employment with Respondent on August 14, 1999. The charge in this case was submitted to the Department of Human Rights on December 16, 1999. In it, Complainant alleged that she was sexually harassed by Respondent, retaliated against for protesting against the harassment and, finally, that she was discharged from her employment with Respondent because she opposed the harassment, all in violation of the Human Rights Act. The Department filed a six-count complaint on behalf of Complainant with the Commission on February 22, 2002. While Respondent participated in the investigation of the charge by the Department of Human Rights, it never appeared at the Commission after the complaint was filed. Complainant was given leave to file a motion for default on August 27, 2002 and she did so on September 30,

2002. Respondent did not respond to the motion for default and a default was entered on November 19, 2002. After the public hearing was held on February 28, 2003, Complainant filed a motion to amend the complaint. This motion requested that Lee Franklin, the owner of Respondent be added as a named respondent. The motion was denied and the matter is now ready for decision.

### **Findings of Fact**

1. Complainant, Chachana Taylor, filed her Charge No. 2001 CE1961 with the Illinois Department of Human Rights on December 16, 1999, alleging that Respondent, AmeriEnvironmental, Inc., sexually harassed her and retaliated against her for opposing sexual harassment by discharging her.

2. On November 19, 2002, an order was entered declaring Respondent in default in accord with the motion filed by Complainant.

3. A public hearing on damages was scheduled for February 28, 2003 and it took place as scheduled on that date.

4. Complainant was present with her attorney at the public hearing on February 28, 2003 and Respondent did not appear.

5. Complainant was discharged on August 14, 1999 and has remained unemployed (with some intermittent employment) through the date of the public hearing. However, she does not seek reinstatement, so her award for back pay will end as of the date of this ROD. Relevant calculations based on this finding of fact are found below and are incorporated in these findings.

6. Due to the loss of her employment, Complainant also suffered emotional distress in excess of that to be expected as a result of a violation of the Human Rights Act.

### **Conclusions of Law**

1. Complainant is an “aggrieved party” and Respondent is an “employer” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. In accord with the default order entered on November 19, 2002, Respondent is liable for a violation of the provisions of the Illinois Human Rights Act that prohibit sexual harassment and retaliation.

4. Based on the default of Respondent and its failure to effectively dispute or oppose any of the requests made by Complainant with regard to an award for back pay, emotional distress and attorney's fees and expenses, Complainant is entitled to an award for each of these elements of loss in order to be made whole.

### **Discussion**

#### *A. Default*

After the complaint and other materials were served on the parties on or about February 26, 2002, Respondent never appeared or otherwise participated in this case. Status hearings were held on April 23, 2002; June 13, 2002; July 23, 2002; and, August 27, 2002. Complainant was given leave to file a motion for default, which she did on September 30, 2002. After allowing time for Respondent to answer the motion for default, it was granted on November 19, 2002. It was found that the conduct of Respondent "demonstrates a contempt on the part of Respondent toward the Commission." It is recommended that the default against Respondent be affirmed by the Commission and a finding of liability for sexual harassment and retaliation be found against Respondent.

#### *B. Damages*

Back Pay -- With there being a finding of liability against Respondent, the first element of damages to be considered is Complainant's request for back pay. Because she has been unemployed or employed at a salary less than that she received from Respondent from the date of discharge to the present, she is entitled to receive back pay from the discharge date to the date of

this recommended order. While the calculation of back pay is always somewhat speculative, the task is made even more difficult when a respondent has deliberately failed to provide information through the discovery process that would make the task more direct. It is the Commission's general principle that any ambiguity in this process be resolved in favor of a prevailing complainant due to the finding of liability against the respondent. Clark v. Human Rights Comm'n, 141 Ill.App.3d 178, 183, 490 N.E.2d 29, 95 Ill.Dec. 556 (1<sup>st</sup> Dist. 1986). This principle must be rigorously followed when a respondent has failed to participate in the case in any way.

At the time of her discharge, Complainant was paid \$24.35 per hour for a 40-hour week, with two to four hours of overtime per week. The record does not indicate if she received a premium for overtime. Her base weekly salary will be calculated at \$24.35 for 44 hours at straight time; this is \$1,071.40 per week or \$4,642.73 per month. She was unemployed for a total of 34 months after the discharge (August, 1999 to September, 2000 and February, 2002 to November, 2003). Her back pay for these segments is \$157,852.82. During the post-discharge period, Complainant had three employers. From September, 2000 to May, 2001, she earned \$5.00 per hour for 20 hours per week as a bus driver (\$100.00 per week; \$433.33 per month). For these eight months, her back pay is \$33,675.20. Then, from June, 2001 through August, 2001, she earned \$10.00 an hour for a 40-hour week as a dance teacher (\$400.00 per week; \$1,733.33 per month). For these three months, her back pay is \$8,728.20. Finally, from September, 2001 through January, 2002, she earned \$11.00 an hour for a 40-hour week as a bus driver for another employer. For these five months, her back pay is \$13,680.30. Complainant testified that she received twelve checks in the amount of \$630.00 as unemployment compensation after the discharge, or a total of \$7,560.00. When this is deducted from her gross back pay of \$213,936.52, it leaves a recommended award of \$206,376.52.

Emotional Distress -- Complainant also requests compensation for the emotional distress she suffered due to the unlawful conduct of Respondent. It has long been established that the

Commission's statutory authority to award a prevailing complainant his or her actual damages includes the ability to award monetary damages for emotional distress. Village of Bellwood v. Illinois Human Rights Comm'n, 184 Ill.App.3d 339, 355, 541 N.E.2d 1248, 133 Ill.Dec. 810 (1<sup>st</sup> Dist. 1989). Here, Complainant argues that "(h)er harassment was severe and it took place on a daily basis for five months." Complainant's Post-Hearing Brief at 3. Further, she testified that she still has difficulty sleeping and suffers headaches due to the harassment permitted by Respondent. Tr. 16. She requests an award of \$100,000.00 for emotional distress.

It is apparent from the record that Complainant suffered a severe emotional reaction to the sexual harassment and subsequent discharge she suffered while employed by Respondent. The degree of emotional distress was significantly over and above that which would be expected from "the mere fact of a civil rights violation" and is therefore compensable under the Human Rights Act. Harris and Vinylgrain Industries of Illinois, Ill. H.R.C. Rep. (1996CA1087, August 1, 2001). Accordingly, I find that Complainant is entitled to an award for emotional distress. She has suggested the amount of \$100,000.00 as the appropriate compensation for the level of emotional distress she suffered. This request is, of course, uncontroverted by Respondent. However, an award in this amount would significantly exceed similar awards previously approved by the Commission in default cases. I find that the harassment and ongoing effects described by Complainant here is quite similar to that described by the complainant in Westley and C.L. Management, Inc., Ill. H.R.C. Rep. (1997CF2799, January 2, 2001), a default case in which the complainant was awarded \$75,000.00 for emotional distress. Therefore, I recommend that Complainant in this matter be awarded \$75,000.00 for her emotional distress.

Attorney's Fee and Costs – Complainant is represented by counsel in this matter and is therefore entitled to an award of her counsel's fair and reasonable fee. The most common measure of fees remains the charging of a set rate per hour for work performed in furtherance of the matter, multiplied by the number of hours expended in doing so. The standard for determining the proper

fee award by the Commission is found in Clark and Champaign National Bank, 4 Ill. H.R.C. Rep. 193 (1983).

Respondent chose not to respond to the petition for fees. The Commission case of Baker and Village of Niles, Ill. H.R.C. Rep. (1999CA0319, April 29, 2002) is only the most recent in a long line of cases holding that if the respondent does not contest the particulars of a petition for fees and costs, all issues related to the petition are waived. This petition is supported by counsel's declaration, which reflects that he is an experienced practitioner in the field of civil rights. His stated hourly rate is \$250.00 per hour, an amount that the Commission has recently begun awarding to the most experienced attorneys appearing before it. There is nothing in the record to indicate that this hourly rate is unreasonable and Respondent has waived any objection to it by its inaction. The petition further notes that counsel spent a total of 10.9 hours on this matter which, when multiplied by the appropriate hourly rates, results in a fee request of \$2,725.00. Further, counsel lists an expense of \$1,060.00 for the services of a special process server who was required to find and serve the owner of Respondent with relevant documents on five occasions. Again, Respondent has waived its objection to this expense. It is recommended that Complainant be awarded \$2,725.00 for her attorney's fee and \$1,060.00 for his related expenses, a total of \$3,785.00.

Other elements of the award, as permitted by the cited sections of the Act and the Commission's procedural rules, or otherwise not requiring additional analysis, are specified in the recommendation summary below.

### **Recommendation**

It is recommended that the default entered against Respondent be affirmed, that Respondent accordingly be found liable for a violation of the Human Rights Act as alleged in the charge, and that Complainant be awarded the following relief:

- A. That Respondent pay Complainant back pay in the net amount of \$206,376.52 for the period August, 1999 through February, 2003;
- B. That Respondent pay Complainant interest on all elements of this award contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-

104(J)) and calculated as provided in Section 5300.1145 of the Commission's Procedural Rules, to accrue until payment in full is made by Respondent;

- C. That if Complainant is ever required to repay any part or all of the unemployment compensation benefits she received, which were deducted from the gross amount of her back pay in arriving at the award noted in Paragraph A above, Respondent will be required to reimburse her for any such payment so that she will be made whole for the full amount of back pay.
- D. That Respondent pay to Complainant the amount of \$75,000.00 for emotional distress;
- E. That Respondent pay to Complainant the amount of \$3,785.00 for her attorney fees and expenses;
- F. That any public contract currently held by Respondent be terminated forthwith and that Respondent be barred from participating in any public contract for three years in accord with Section 8-109(A)(1) and (2) of the Human Rights Act. 775 ILCS 5/8-109(A)(1) and (2).
- G. That Respondent cease and desist from any discriminatory actions with regard to any of its employees and that Respondent, its managers, supervisors and employees be referred to the Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent; and,
- H. That Complainant's personnel file or any other file kept by Respondent concerning Complainant be purged of any reference to this discrimination charge and this litigation.

#### HUMAN RIGHTS COMMISSION



ENTERED:

November 10, 2003

BY: \_\_\_\_\_

DAVID J. BRENT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

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